No. 89-1361

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Petitioner,

—v.—

LARRY WOLLERSHEIM,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioner Church of Scientology of California submits this Supplemental Memorandum to bring to the Court's attention two new additional factors relevant to the Court's consideration of the petition pending in this case.

1. On April 16, 1990, this Court issued an order continuing the order previously issued by Justice O'Connor staying execution of the judgment in a case entitled *International Society for Krishna Consciousness of California* v. *George*, No. 89-1399, pending this Court's disposition of the petition for a writ of certiorari in the *George* case. The petition in this case raises questions similar to, but broader than, the questions presented in *George*. In particular, the first question presented in this case encompasses but is broader than the first question presented in *George*. The second question

presented in this petition is virtually identical to the second question presented in *George*, and the third question presented in this case is substantially related to the second question presented in both petitions. The fourth and fifth questions presented in this case are similar to and are encompassed within the third question presented in the *George* petition.

In granting a stay of execution of judgment in the *George* case, this Court apparently has made a preliminary determination that there is a reasonable probability that the petition in *George* may be granted and a fair prospect that the questions presented will result in reversal of the judgment below. *California* v. *American Stores Co.*, 110 S.Ct. 1, 2 (1989) (O'Connor, J., in chambers); *Rostker* v. *Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers). The respondent's brief in opposition to the petition in the *George* case is scheduled to be filed today, April 17, 1990. The petition in *George* has not been set for conference. We have been informed by the clerk's office that the petition in this case has been scheduled for conference on April 20, 1990. We submit this Supplemental Memorandum to highlight to the Court the similarity and overlap between the petitions in the two cases. Petitioner submits that the petitions in both the *George* case and this case should be granted.

2. In our Reply Brief in Support of Petition for Writ of Certiorari (at p. 3, n.3), we noted that a federal district court in California had issued an order precluding the testimony of psychologist Margaret Singer and sociologist Richard Ofshe on the subject of "coercive persuasion" and "thought reform" on the ground that their theories are not widely recognized in the scientific community. *United States* v. *Fishman*, No. CR-88-0616-DLJ (N.D. Calif.).

On April 13, the district court in that case issued a twenty-four page opinion explaining the reasons for its order. The opinion further highlights the faulty basis upon which were based the assaults on religious free exercise in this case and

the George case.[1] The district court in *Fishman* found, based upon an "expansive record" (slip op. at 12), that "the scientific community has resisted the Singer-Ofshe thesis applying coercive persuasion to religious cults" (*id.* at 11), and that "there is no consensus or general acceptance within [the American Psychological Association and the American Sociological Association] regarding the thought reform theories of Dr. Singer and Dr. Ofshe" (*id.* at 12). The court stated:

> Dr. Singer and Dr. Ofshe contend that an individual's free will can be overborne by persuasive techniques in the absence of physical force. They further contend that they can pinpoint with scientific accuracy the degree of non-physical coercion necessary to overcome the free will of an individual having a particular personality composite.
>
> * * *
>
> There is no consensus within the scientific community regarding whether the deprivation of free will occurs in these circumstances, nor is there a consensus on how to measure this deprivation.

Slip op. at 13-14.

The *Fishman* court's holding that the theories of Singer and Ofshe "are not sufficiently established to be admitted as evidence in federal courts of law" (*id.* at 14), stands in stark contrast to the approach taken by the California trial and appellate courts in cases such as this case and *George*, where such theories were admitted as a basis for finding peaceful religious practices to be actionable as "outrageous conduct." Certiorari should be granted, *inter alia*, to resolve the growing conflict among the lower courts as to whether controversial and unscientific theories of peaceful "coercive persuasion" may be imposed as a basis for imposing sub-

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1 Both here and in *George* the plaintiffs relied heavily on the expert testimony of Singer and Ofshe on "coercive persuasion" and "thought reform".

stantial burdens on the free exercise of peaceful religious practices.

Respectfully submitted,

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